SERVED: January 13, 2000

NTSB Order No. EA-4813

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of January, 2000

JANE F. GARVEY, Administrator, Federal Aviation Administration, Complainant, v. FRANK A. RICHARDS, Respondent.	Docket SE-15780

OPINION AND ORDER

The Administrator has appealed the initial decision and order issued by Administrative Law Judge William R. Mullins on December 16, 1999, at the conclusion of an evidentiary hearing.[1] By that decision, the law judge reversed the Administrator's emergency order revoking respondent's airline transport pilot (ATP) certificate for his alleged making of a fraudulent or

[1]An excerpt from the hearing transcript containing the law judge's initial decision is attached.

intentionally false statement on two applications for airman type ratings, in violation of Section 61.59(a)(1) of the Federal Aviation Regulations (FAR), 14 CFR Part 61.[2] For the reasons that follow, the Administrator's appeal is denied, and the law judge's order dismissing the complaint is affirmed.

The record establishes the following. Respondent holds an ATP certificate and has been a corporate pilot with Newell Rubbermaid [hereinafter referred to as "the company"] for more than twenty years. He holds type ratings in several aircraft, including the Falcon 900. In November 1998, the company sent two of its other captains, Scott Jeppson and Mark Sheridan, to Flight Safety International so that they could also obtain type ratings in the Falcon 900 aircraft. Because Flight Safety International's flight simulator was not available following their ground training, the company contracted with another flight school, Quality Aviation Training, to complete their training and testing. James Carey, an FAA-Designated Pilot Examiner (DPE), part owner, and Chief Flight Instructor for Quality Aviation Training, handled the training and testing of the Newell Rubbermaid pilots.

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[2]FAR § 61.59(a)(1) provides as follows:

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.
(a) No person may make or cause to be made:
(1) Any fraudulent or intentionally false statement on any application for a certificate, rating, authorization, or duplicate thereof, issued under this part....

In addition to their formal training, respondent spent time with both Jeppson and Sheridan in order to familiarize them with the company's Falcon 900 aircraft. Respondent, Jeppson, and Sheridan have been friends and co-workers for over twenty years. Mr. Jeppson testified that respondent "was very helpful with...things like air speed tips...even taxiing the airplane. It's a large airplane....It's easy to get moving too fast. And he said you're sitting up so high it's very easy to get taxiing too fast....so he helped me...since I had not flown the airplane...." (TR 41-42). And, Mr. Jeppson testified, even while at Flight Safety International, where respondent was taking Falcon 10 aircraft recurrent training while Jeppson and Sheridan were taking their Falcon 900 aircraft training, respondent would meet with them after class at the hotel where they were all staying, and go over aircraft systems and discuss techniques of flying the aircraft. Mr. Sheridan testified similarly.

It is in this context that the events giving rise to the complaint took place. On the evening of Sunday, November 15, 1998, Jeppson and Sheridan were given night training by James Carey in the company's Falcon 900 aircraft. Respondent was also on board the aircraft that evening, because his chief pilot had arranged for him to take night currency training. Everyone performed their required take-offs and landings.

After they landed, they all sat down in an office. According to the testimony of respondent, Jeppson, and Sheridan, Carey took out a package of paperwork, and asked respondent to

recommend both Jeppson and Sheridan for their type ratings by signing their respective FAA Forms 8710-1. Respondent replied that he was not a flight instructor[3] and Carey then advised him that he did not need to be a CFI because he was an ATP, and because he had a type rating in the aircraft. According to respondent, he had heard that an ATP had those privileges, so he found what Carey said to be reasonable and he did not question him further.

The top of the second page of FAA Form 8710-1 contains a section entitled "Instructor's Recommendation." It states, "I have personally instructed the applicant and consider this person ready to take the test." Respondent dated[4] the forms, signed the forms with his name, and placed his ATP certificate number in the space provided. He left blank the space for a certificate expiration date, since an ATP certificate has no expiration date. Respondent testified that he believed that Sheridan and Jeppson were good pilots, he knew that they had taken the necessary training, and he felt that they were ready to take their check rides. He believes that what he signed was a true statement. (TR 107).

Unbeknownst to Newell Rubbermaid and its employees, James Carey did not have the authority to both train *and* test pilots, nor had he requested such authority from his local Flight

[3]His flight instructor certificate has long expired.

[4]Respondent testified that he mistakenly dated the forms November 14, instead of November 15.

Standards District Office. Had Carey signed the instructor's recommendation, their applications for type ratings would have been rejected. Had the instructor's recommendation been left blank, however, the applications apparently would not have been rejected, because an instructor's recommendation is not required for an ATP who is applying for a type rating. In any event, respondent's signature on the FAA Forms 8710-1 was questioned because of an investigation into Quality Aviation Training that has since resulted in, among other things, the de-designation of James Carey as a DPE. The FAA investigator-in-charge testified that even though the instructor's recommendation was not required, if one was there he would have considered it in his decision on whether to accept or reject the application.

The law judge, after hearing all of the evidence and observing the demeanor of the witnesses, determined as a matter of credibility that respondent did not lie when he signed the FAA Forms 8710-1. In the law judge's opinion, respondent was not unreasonable in relying on the assurances of the FAA-designated pilot examiner that he could properly sign the forms. And, the law judge found, it was not unreasonable for respondent to believe that his endorsements were truthful, because of the informal instruction he had actually given to the applicants while they were taking their ground and flight instruction.[5]

In order to establish the charge of intentional

[5]The law judge also found it relevant that respondent had nothing to gain by giving these endorsements.

falsification, it was the Administrator's burden to prove that respondent made a false statement, that he made it with knowledge of its falsity, and that the statement he made was in reference to a material fact.[6] Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976). If the evidence fails to support any one of these elements, the allegation must fail. Since the law judge found that respondent did not lie, his dismissal of the complaint must be upheld, absent some compelling basis for the Board to conclude that his credibility determination was arbitrary, capricious, or otherwise deficient. See Administrator v. Smith, 5 NTSB 1560, 1563 (1986).

The Administrator would have us overturn the law judge's findings because, in her opinion, it is inherently incredible that respondent would not know that *only* a CFI could sign an endorsement on the FAA Form 8710-1. We disagree. First, as the law judge notes, the only indication on the form itself that suggests such a limitation is a block provided for the date on which the instructor's certificate expires.[7] Nowhere on the form does the term "certified flight instructor" appear.[8] Secondly,

[6]For a statement to be material, it need only be capable of influencing the decision of the agency in making a required determination. Twomey v. NTSB, 821 F. 2d 63, 66 (1st Cir. 1987).

[7]We agree with the law judge that the mere fact that respondent has applied for several type ratings does not prove he knew anything about the requirements on the second page of the form, which is not completed by the applicant.

[8]We also believe it is telling that respondent never held himself out as a CFI. He provided only his ATP certificate number, and he left the expiration date block blank.

this argument appears to be inconsistent with the Administrator's own regulations. FAR § 61.167(b)(1) provides at least one exception where an airline pilot who does not hold a CFI certificate could properly sign an FAA Form 8710-1. The regulation provides, in part,

> An airline transport pilot may instruct....other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the airline transport pilot is rated **and endorse** the logbook **or other training record** of the person to whom training has been given....[9] (emphasis added).

We need not decide in this case whether the exception contained in the regulation is applicable here.[10] It is enough, we think, to support the judge's finding that it was not unreasonable for respondent to rely on Carey's advice. Finally, there is evidence that respondent did participate in some fashion in the training of these pilots, and we think that suffices to support

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[9]We question the Administrator's assertion that this regulation *clearly* applies only to ATP pilots "in operations for compensation or hire." The regulation states that an airline transport pilot may instruct other pilots "in air transportation service," but that term is not defined. The term "Air transportation" is defined in FAR § 1.1 as "interstate, overseas, or foreign air transportation or the transportation of mail by aircraft." And, as the Administrator notes, "Interstate air transportation" is defined in FAR § 1.1 as "the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail be aircraft in commerce." But see the definition of "Interstate air commerce" in FAR § 1.1, "the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, **or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation....**" (emphasis added).

[10]We do note that, consistent with respondent's testimony that he recalled hearing about this ATP "privilege," the regulation is in fact entitled "Privileges," and appears under the Subpart captioned "Airline Transport Pilots."

the judge's ruling that respondent's statement was not made with knowledge of its falsity. In sum, the Administrator offers us no compelling reasons to overturn the law judge's credibility determination.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied;

2. The law judge's initial decision is affirmed; and

3. The Administrator's complaint is dismissed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.